

REMARKS

In the present Application, Claims 2 and 22 have been cancelled, and Claims 1, 3-6, 10, 11, 14, 16, and 20 have been amended. As such, Claims 1, 3-6, 7, 10, 11 and 13-20 are currently pending. The Examiner's objections and rejections are as follows:

- (I) Examiner requested that the IDS references be re-submitted, and
- (II) Claims 1-7, 10, 11, 13-20 and 22 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Rees et al. 6,197,330 or 5,972,332.

Applicant believes the following amendments and remarks traverse the Examiner's objections and rejections.

I. Request to Re-submit IDS References

The Examiner indicated that the IDS references submitted on May 12, 2003 were not considered since they did not reach the application file. The Examiner requested that these references be re-submitted (Office Action, page 2). Applicant's representative has attempted to call the Examiner regarding this issue. It has come to the Applicant's representative attention that IDS references that are submitted in boxes (i.e. containing a large number of references) are no longer forwarded to the Examiner, but instead are taken to a room where all large IDS boxes are stored. Applicant requests that the Examiner have someone search this room for the 67 misplaced references in this application. If the Examiner is unable to locate the box of references, Applicant requests that the Examiner call Applicant's representative prior to examining this application.

II. No *Prima Facie* Case of Obviousness Could be Established

The Examiner rejected Claims 1-7, 10, 11, 13-20 and 22 under 35 U.S.C. 103(a) as being allegedly unpatentable over Rees et al. 6,197,330 or 5,972,332 (Office Action, pages 2-3). In particular the Examiner alleges that:

- 1) Rees et al. discloses that the solid support material may be treated with a sodium hydroxide solution (Office Action, page 2); and
- 2) [i]t would have been a matter of obvious choice depending on individual preference and convenience to modify Rees et al. by first putting the support into the enclosure,

and then introducing cells into the enclosure to attach the cells to the support (Office Action, page 3).

In regard to point 1), Applicant acknowledges that Rees et al. does in fact teach treating the solid support with a sodium hydroxide solution. Applicant thanks the Examiner for bringing this to the Applicant's attention.

In regard to point 2), Applicant respectfully disagrees with the Examiner that "[i]t would have been a matter of obvious choice" to introduce the cells into the enclosure after introducing the solid support material in the disclosure. Applicants note that the Examiner has failed to provide a reference to support this assertion (See, MPEP 2144.03, *In re Ahlert*, 424 F.2d 1088, CCPA, 1970, stating "assertions of technical facts in areas of esoteric technology must always be supported by citation of some reference work.")).

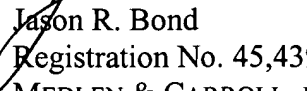
Nonetheless, for business reasons, in order to further the prosecution of the present Application, yet without acquiescing to the Examiner's rejection, while explicitly reserving the right to prosecute the original claims (or similar claims) in the future, Applicant has amended the claims. In particular, Applicant has amended Claims 1 and 10 by reciting that the enclosure is initially "un-sealed," and then is sealed after the solid support material is introduced, but before the cells are introduced. As such, the claims now indicate that the cells are added to a sealed enclosure (e.g. injected into the enclosure in Claim 1, and migrate into the enclosure in Claim 10). The Rees et al. patents do not teach adding cells after the enclosure is sealed. As such, the Examiner could not establish a *prima facie* case of obviousness for the amended claims based on the Rees et al. patents (e.g. references do not teach all the claim limitations, etc.). Therefore, the amended claims should be passed to allowance.

Claim 1 has also been amended to recite that the cells are injected into the sealed enclosure. Applicant submits that the Rees et al. patents do not teach introducing cells into an already sealed enclosure, let alone injecting the cells. Applicant also notes that Claim 10 recites that the cells migrate into the sealed enclosure. Again, the Rees et al. patents do not teach introducing cells into an already sealed enclosure, let alone immersing cells in a culture of viable cells such that the cells migrate into the sealed enclosure. In light of the further lack of teaching in the Rees et al. patents, Applicant submits that the amended claims should be passed to allowance.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that Applicants' claims should be passed to allowance. If a telephone interview would aid in the prosecution of this Application, Applicants encourage the Examiner to call the undersigned collect at 608-218-6900.

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